

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOEL FLORIANO MARTINEZ,

Defendant.

Case No. 2:12-CR-00246-KJD-GWF

ORDER

Presently before the Court are Defendant's Motion to Vacate, Set Aside or Correct Sentence (#28) and Motion for Reduction of Sentence Pursuant to 18 U.S.C. § 3582(c)(#31). In Plaintiff's § 2255 motion, it appears he is requesting that the Court order the Bureau of Prisons to release him early to serve the remainder of his sentence under home confinement pursuant to 18 U.S.C. § 3624(c)(2). However, that section provides the Director of the Bureau of Prisons with the discretion to determine how the remainder of Defendant's sentence is to be served. See 18 U.S.C. § 3624(c)(1,4). Accordingly, this Court is without authority under the statute to grant Defendant relief.

Plaintiff also seeks a reduction of his sentence purportedly pursuant to 18 U.S.C. § 3582(c) which states:

[I]n the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant ... the court


1 may reduce the term of imprisonment, after considering the factors set forth in section
2 3553(a) to the extent that they are applicable, if such a reduction is consistent with
applicable policy statements issued by the Sentencing Commission.

3 18 U.S.C. § 3582(c)(2). However, the sentencing range Defendant relies on was lowered in 2008.
4 Defendant was sentenced in 2013. There has been no subsequent lowering of Defendant's sentencing
5 range. Therefore, the Court is without authority under the statute to lower Defendant's sentence.

6 Accordingly, IT IS HEREBY ORDERED that Defendant's Motion to Vacate, Set Aside or
7 Correct Sentence (#28) is **DENIED**;

8 IT IS FURTHER ORDERED that Defendant's Motion for Reduction of Sentence Pursuant to
9 18 U.S.C. § 3582(c)(#31) is **DENIED**.

10 DATED this 16th day of October 2013.

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14 Kent J. Dawson
United States District Judge
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